

2009 DRAFTING REQUEST

Senate Amendment (SA-AA2-SB530)

Received: **04/21/2010**

Received By: **mkunkel**

Wanted: **As time permits**

Companion to LRB:

For: **Russell Decker (608) 266-2502**

By/Representing: **Barbara Worcester**

May Contact:

Drafter: **mkunkel**

Subject: **Fin. Inst. - int. rates/loans**

Addl. Drafters:

Extra Copies: **ARG**

Submit via email: **YES**

Requester's email: **Sen.Decker@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Regulation of title loans and payday loans

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/1	mkunkel 04/22/2010	nnatzke 04/22/2010	rschluet 04/22/2010	_____	sbasford 04/22/2010	sbasford 04/22/2010	

FE Sent For:

<END>

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/?	mkunkel	/1 nwn 4/22		_____ _____			
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FE Sent For:

<END>

Kunkel, Mark

From: Kunkel, Mark
Sent: Wednesday, April 21, 2010 4:41 PM
To: Worcester, Barbara
Subject: RE: LRBa2330/3

*See pencil changes
per Barb 4-22 am*

Barb:

To summarize our conversation, you will need an amendment to AA2 to SB-530 that does the following:

Regarding payday loans:

1. Keep the disclosures and informational material described in item 2 (B) in my email below. ✓
2. Keep the change made to rescission described in item 2 (D) below. ✓
3. Keep the change made to NSF fees described in item 2 (E) below. ✓
4. Delete all other changes made to payday loans.

Regarding title loans:

1m. keep 50% value limit on loan, but apply only to principal (not interest, etc)

1. Move title loans to their own section of ch. 138 that is different than the payday loan section (i.e., s. 138.14).
(Note to self: create a new section in ch. 138 that imposes requirements on lenders licensed under s. 138.09 who make title loans. By relying on the licensing requirements under current law in s. 138.09, I won't have to recreate new licensing requirements in the new title loan section of ch. 138.)

must delete p. 6, line 12-18

2. Add a requirement to the definition of title loan that a loan is a title loan only if the term is 6 months or less. *1 year or less* *1-year limitation*

3. Do not impose any limit on amount of a title loan or pre-maturity interest, but do impose the same 2.75% post-maturity interest that is similar to the post-maturity interest for payday loans. *must replace (2m) (e)*

3. Keep AA2's provisions for title loans regarding keys, rescission (same as payday loans), and return of proceeds. *ALSO keep (12m) (d) [storage], (f) [proceeds], (c) (but delete "in person" under § 8(1)(f) & p 7, line 12)*

4. Delete any other requirements, including database, private right of action, etc.

You should receive the amendment sometime late tomorrow morning. If I have questions, I can call you at 267-9574.

-- Mark

From: Kunkel, Mark
Sent: Wednesday, April 21, 2010 3:39 PM
To: Worcester, Barbara
Subject: LRBa2330/3

§(5) (definition) - with new language

Here are the things that LRBa2330/3 does to SSA1 to SB-530:

1. Regulates title loans, in addition to payday loans. See definition of title loan at page 3 lines 1 to 4 of the amendment. In general, title loans and payday loans are treated the same under the amendment, except as follows:

A. Title loans are subject to a different max liability amount (principal, interest and all other fees), which is 50% of value of motor vehicle used as security. See page 6, line 19 to page 7, line 2 of the amendment.

B. Term of title loan must be 1 year or less. See page 7, lines 9 to 10 of the amendment.

C. A customer can have only one title loan outstanding at a time. See page 6, beginning at line 17 of the amendment.

D. Creates requirements that apply only to title loans on page 7, line 6 to page 8, line 9 of the amendment.

2. In addition to treating title loans like payday loans under SSA1, the amendment creates the following new requirements that apply to both title and payday loans:

A. Increases the criminal fine on page 29, line 3 of SSA1 from \$500 to \$1,000.

B. Requires disclosure requirements before a loan is made. Also requires giving the customer informational materials. See page 3 line 14 to page 5, line 13 of the amendment.

C. Prohibits balloon payments. See page 6 lines 11 to 14.

D. Allows rescission either before the close of next business day, or if business is open 24 hours, before 5 pm of next business day. See page 6, lines 3 to 5 of the amendment.

E. Allows for only one \$15 NSF fee. See page 5, lines 19 to 24 of the amendment.

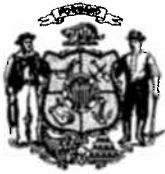
F. Creates a private cause of action. See page 9, lines 6 to 11 of the amendment.

3. The amendment also prohibits balloon payments for loans made by any licensed lender (not just title and payday loans). See page 2, lines 14 to 17 of the amendment.

Kunkel, Mark

From: Worcester, Barbara
Sent: Thursday, April 22, 2010 9:33 AM
To: Kunkel, Mark
Subject: Language

P.8, l. 9 strike "engaged in misconduct" and insert "impaired the title lender's security interest by intentionally damaging or destroying the motor vehicle; intentionally concealed the motor vehicle pledging to the title lender a motor vehicle that is already encumbered by an undisclosed prior lien; or has subsequently pledged or sold to a third party a motor vehicle serving as collateral for a title loan without the title lender's written consent."



State of Wisconsin
2009 – 2010 LEGISLATURE

LRBa2330/3
MDK:jld:jf

ASSEMBLY AMENDMENT 2,
TO 2009 SENATE BILL 530

April 20, 2010 – Offered by Representatives HINTZ, SEIDEL, ZEPNICK, JORGENSEN,
FIELDS and SMITH.

1 At the locations indicated, amend the bill, as shown by senate substitute
2 amendment 1, as follows:

3 1. Page 1, line 5: after “payday loans” insert “and motor vehicle title loans”.

4 ~~2. Page 1, line 6: delete “a payday lender” and substitute “such lenders”.~~

5 ~~3. Page 6, line 1: after “Payday” insert “and title”.~~

6 ~~4. Page 6, line 10: after “PAYDAY” insert “AND TITLE”.~~

7 ~~5. Page 6, line 14: after that line insert:~~

8 ~~“4. “Title lender” means a business, owned by a licensee, that makes title loans.~~

9 ~~5. “Title loan” has the meaning given in s. 138.14 (1) (m).”.~~

10 ~~6. Page 6, line 15: after “payday” insert “and title”.~~

11 ~~7. Page 6, line 16: on lines 16, 18, 19 and 21, before “lender” insert “or title”.~~

12 ~~8. Page 6, line 19: after “another payday” insert “or title”.~~

1 **9.** Page 7, line 1: on lines 1, 3, 7 and 9, after “payday” insert “or title”.

2 **10.** Page 7, line 12: after “*Payday*” insert “*and title*”.

3 **11.** Page 7, line 16: after that line insert:

4 “d. “Title lender” means a business, owned by a licensee, that makes title loans.

5 e. “Title loan” has the meaning given in s. 138.14 (1) (m).”.

6 **12.** Page 7, line 17: on lines 17, 19, 20 and 22, before “lender” insert “or title”.

7 **13.** Page 7, line 20: after “another payday” insert “or title”.

8 **14.** Page 7, line 24: before “lenders” insert “or title”.

9 **15.** Page 8, line 1: on lines 1, 5 and 7, after “payday” insert “or title”.

10 **16.** Page 9, line 1: after “Payday” insert “or title”.

11 **17.** Page 9, line 15: after “payday” insert “or title”.

12 **18.** Page 10, line 2: after that line insert:

13 “**SECTION 11m.** 138.09 (8) (f) of the statutes is created to read:

14 138.09 (8) (f) Make no loan that requires a schedule of payments by a borrower
15 under which any one payment is not equal or substantially equal to all other
16 payments, or under which the intervals between any consecutive payments differ
17 substantially.”.

18 **19.** Page 10, line 11: after “**Payday**” insert “**and title**”.

19 **20.** Page 10, line 21: after “payday” insert “or title”.

20 **21.** Page 11, line 12: after “payday” insert “or title”.

21 **22.** Page 12, line 4: after that line insert:

1 “(m) “Title loan” means a loan of \$25,000 or less to a borrower, who obtains or
2 seeks to obtain the loan for personal, family, or household purposes, that is, or is to
3 be, secured by an interest, other than a purchase money security interest, in the
4 borrower’s motor vehicle.”.

5 **23.** Page 12, line 5: on lines 5 and 8, after “payday” insert “or title”.

6 **24.** Page 12, line 9: on lines 9 and 23, after “payday” insert “and title”.

7 **25.** Page 13, line 20: after “payday” insert “or title”.

8 **26.** Page 15, line 2: after “payday” insert “or title”.

9 **27.** Page 16, line 17: on lines 17, 18, 20, 22 and 24, after “payday” insert “and
10 title”.

11 **28.** Page 17, line 1: on lines 1, 3, 5 and 7, after “payday” insert “and title”.

12 **29.** Page 17, line 4: after “payday” insert “or title”.

13 **30.** Page 19, line 19: after that line insert:

14 “(9g) DISCLOSURE REQUIREMENTS. (a) Before any licensee enters into a payday

15 ~~of title~~ loan with an applicant, the licensee shall do all of the following:

16 1. Disclose to the applicant the total amount of all fees and costs, in dollars, to
17 be paid by the applicant for the loan assuming that the loan is paid in full at the end
18 of the loan term.

19 2. Disclose to the applicant the annual percentage rate to be paid by the
20 applicant on the loan assuming that the loan is paid in full at the end of the loan term.

21 3. Provide to the applicant a copy of the written informational materials
22 specified in sub. (9r).

1 4. Disclose to the applicant that he or she has the right to rescind the loan
2 transaction as provided in sub. (11r).

3 5. Disclose to the applicant the service charge that may apply under sub. (10)
4 (b) 2.

5 6. Disclose to the applicant the payment requirements that may apply under
6 sub. (11g) (a) if the loan is not paid in full at the end of the loan term.

7 (b) A licensee shall retain, for at least 3 years after the origination date of any
8 ~~X~~ payday ~~or title~~ loan, a record of compliance with par. (a) with respect to the loan.

9 **(9r)** INFORMATIONAL MATERIALS. (a) The division shall develop written
10 ~~X~~ informational materials on payday ~~and title~~ loans and the payday ~~and title~~ loan
11 industries. These informational materials shall be designed to educate individuals
12 regarding the operation and potential costs of payday ~~and title~~ loans and of other
13 options for borrowing funds that may be available.

14 (b) The informational materials under par. (a) shall include a clear and
15 ~~X~~ conspicuous notice that a payday ~~or title~~ loan is not intended to meet long-term
16 financial needs and that a payday ~~or title~~ loan applicant should use a payday ~~or title~~
17 loan only to provide funds in a financial emergency.

18 (c) The informational materials under par. (a) shall include all of the following
19 information, based upon aggregated information from reports submitted under sub.
20 (7) (d) for the most recent reporting period:

21 ~~X~~ 1. The average annual percentage rate for payday ~~and title~~ loans.

22 ~~X~~ 2. The percentage of customers originating payday ~~and title~~ loans who defaulted
23 on the loan.

24 ~~X~~ 3. The percentage of customers originating payday ~~and title~~ loans whose
25 payment method was dishonored or denied for insufficient funds.

1 4. The percentage of customers originating payday ~~or title~~ loans that resulted
2 in repayment under sub. (11g) (a).

3 (d) The informational materials under par. (a) shall include a summary of all
4 actions that the licensee may take against a payday ~~title~~ loan customer if the
5 customer defaults on the payday loan or if the customer's check or electronic fund
6 transfer is dishonored or denied for insufficient funds.

7 (e) The division shall annually update the informational materials under par.
8 (a), based upon the division's analysis of reports received under sub. (7) (d).

9 (f) The division shall make copies of the informational materials under par. (a)
10 available, upon request, to licensees and to the public, including making these
11 informational materials available on the Internet site of the department of financial
12 institutions. The division may charge licensees a reasonable fee for printed copies
13 of informational materials supplied under this paragraph.”.

14 ~~31.~~ Page 19, line 22: on lines 22, 23 and 25, after “payday” insert “or title”.

15 ~~32.~~ Page 19, line 23: delete “2. If” and substitute:

16 “2. Subject to sub. (12m) (e), if”.

17 ~~33.~~ Page 20, line 14: on lines 11, 17 and 25, after “payday” insert “or title”.

18 ~~34.~~ Page 20, line 14: delete lines 14 to 16 and substitute:

19 “2. A licensee may present a customer's check for payment no more than once.
20 For each customer authorization to initiate an electronic fund transfer from the
21 customer's account, a licensee may initiate an electronic fund transfer no more than
22 once. The only charge that a licensee may impose for dishonor of a customer's check
23 or denial of the licensee's instruction to execute an electronic fund transfer is a
24 service charge that does not exceed \$15.”.

1 **35.** Page 21, line 7: on lines 7, 8, 10, 11, 12 and 13, after "payday" insert "or
2 title".

3 **36.** Page 21, line 9: before "by returning" insert "or, if the place of business
4 where the loan is made is open 24 hours, before 5 p.m. on the next day of business
5 after the loan is made,".

6 **37.** Page 21, line 15: on lines 15 and 17, after "subsequent payday" insert "or
7 title".

8 **38.** Page 21, line 15: after "another payday" insert "or title".

9 **39.** Page 21, line 17: after "new payday" insert "or title".

10 **40.** Page 21, line 19: after that line insert:

11 "(am) No licensee may make a payday or title loan that requires a schedule of
12 payments by a customer under which any one payment is not equal or substantially
13 equal to all other payments, or under which the intervals between any consecutive
14 payments differ substantially."

15 **41.** Page 21, line 20: delete "(b)" and substitute "(b) 1.".

16 **42.** Page 21, line 24: after that line insert:

17 "2. No licensee may make a title loan to a customer who is liable for repayment
18 of any amount on a title loan made by the licensee or another licensee. No licensee
19 may make a title loan to a customer that results in the customer having liability for
20 the loan, in principal, interest, and all other fees and charges, of more than 50 percent
21 of the value of the motor vehicle used as security for the loan. The division shall
22 promulgate rules for determining the value of a motor vehicle for purposes of this

subdivision, including rules specifying pricing guides that may be used for determining value”.

43. Page 22, line 1: on lines 1, 5, 8, 12, 14, 17 and 21, after “payday” insert “or title”.

44. Page 22, line 17: after that line insert:

“(12m) TITLE LOANS. (a) A licensee may not require a customer to provide the licensee with a key or copy of a key to a motor vehicle used as security for a title loan as a condition for making the title loan to the customer.

(b) A licensee may not make a title loan to a customer that has a term of more than one year.

(c) A licensee or person acting on behalf of a licensee may not take possession of a motor vehicle used as security for a title loan to a customer without serving notice on the customer in the manner provided under s. 801.11 (1) (a) or (b) at least 15 days prior to taking possession. The notice shall state the intent to take possession and describe the basis for the right to take possession. This paragraph does not apply to possession that is obtained by a customer’s voluntary surrender of a motor vehicle. A violation of this paragraph is subject to s. 425.305.

(d) A licensee or other person may charge a customer a reasonable storage fee for a motor vehicle of the customer of which the licensee or person acting on behalf of the licensee has obtained possession, including possession that is obtained by voluntary surrender.

(e) No interest on a title loan may accrue as of the date that a licensee obtains possession of a motor vehicle used as security for the title loan, including possession that is obtained by voluntary surrender. No interest on a title loan may accrue after

60 days following a customer's failure to make any payment required for the loan, unless the customer has concealed the location of the motor vehicle used as security for the loan.

(f) A licensee shall return to a customer the amount of any proceeds from the disposition of a motor vehicle used as security for a title loan to the customer that exceed the customer's liability to the licensee for the loan.

(g) A customer is not liable to a licensee for any deficiency resulting from the licensee's disposition of a motor vehicle used as security for a title loan, unless the customer has engaged in misconduct."

45. Page 22, line 18: on lines 18 and 20, after "payday" insert "and title".

46. Page 23, line 2: on lines 2, 4 and 5, after "payday" insert "or title".

47. Page 24, line 4: after "payday" insert "and title".

48. Page 24, line 13: after "payday" insert "or title".

49. Page 25, line 4: on lines 4, 7, 15 and 23, after "payday" insert "or title".

50. Page 25, line 17: on lines 17 and 19, after "payday" insert "and title".

51. Page 26, line 2: after "payday" insert "and title".

52. Page 26, line 16: on lines 16, 22 and 25, after "payday" insert "or title".

53. Page 27, line 1: on lines 1, 8 and 24, after "payday" insert "or title".

54. Page 27, line 2: after "payday" insert "and title".

55. Page 27, line 7: after "outstanding payday" insert "or title".

56. Page 27, line 7: after "open payday" insert "or title".

57. Page 27, line 15: on lines 15, 16 and 17, after "PAYDAY" insert "OR TITLE"

1 **58.** Page 28, line 6: on lines 6, 10 and 25, after "payday" insert "or title".

2 **59.** Page 28, line 14: on lines 14 and 16, after "payday" insert "and title".

3 **60.** Page 29, line 3: delete "\$500" and substitute "\$1,000".

4 **61.** Page 29, line 4: after "payday" insert "or title".

5 **62.** Page 29, line 9: delete lines 9 to 12 and substitute:

6 "(16) PRIVATE CAUSE OF ACTION: If a person makes a payday or title loan to a
7 customer that violates this section, the customer may bring an action against the
8 person for an amount equal to twice the interest charged for the loan, or the actual
9 damages, including any incidental and consequential damages, sustained by the
10 customer by reason of the violation, whichever is greater, and, notwithstanding s.
11 814.04 (1), the costs of the action, including reasonable attorney fees."

12 **63.** Page 32, line 3: after "(k)" insert ", or a title loan, as defined in s. 138.14
13 (l) (m)".

14 **64.** Page 32, line 6: after "act," insert "and title loans, as defined in section
15 138.14 (1) (m) of the statutes, as created by this act,".

16 Page 32 line 7 after (END)

INIT APP for payday & title loans

Page 29, line 12, after that line insert:

138.16
defined - title loan (w/ 6 months)
discharged lender

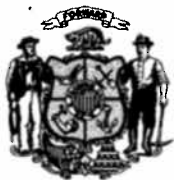
Other request
- Keys
- return of proceeds
- \$1000
- possession (not changed)
- refinancing w/ new
loan amount

Other request

Max loan amt plus 21.9

& one loan per car title
Post-Maturity - p. 19 of SSAI line 23 to
p. 20 line 2

1130155 - SSAI p. 21 line 8 to 11 on question
64412



State of Wisconsin
2009 - 2010 LEGISLATURE

LRBa2515/1

MDK:|....

nwn

Nwn

**SENATE AMENDMENT ,
TO ASSEMBLY AMENDMENT 2,
TO 2009 SENATE BILL 530[✓]**

- 1 At the locations indicated, amend the amendment[✓] as follows:
- 2 **1.** Page 1, line 4: delete the material beginning with that line and ending with
- 3 page 3, line 12.[✓]
- 4 **2.** Page 3, line 15: delete "or title".[✓]
- 5 **3.** Page 4, line 8: on lines 8, 15, 22, and 24, delete "or title".[✓]
- 6 **4.** Page 4, line 10: delete "and title loans and the payday and title loan" and
- 7 substitute "loans and the payday loan".[✓]
- 8 **5.** Page 4, line 12: on lines 12 and 21, delete "and title".[✓]
- 9 **6.** Page 4, line 16: delete "or title loan applicant should use a payday or title"
- 10 and substitute "loan applicant should use a payday".[✓]
- 11 **7.** Page 5, line 1: on lines 1 and 4, delete "or title".[✓]

1 **8.** Page 5, line 14: delete lines 14 to 17.✓

2 **9.** Page 6, line 1: delete lines 1 and 2.✓

3 **10.** Page 6, line 6: delete the material beginning with that line and ending
4 with page 9, line 11.✓

5 **11.** Page 9, line 11: after that line insert:

6 “62m.✓ Page 29, line 12: after that line insert:

7 ~~“62m.”~~ **SECTION 14m.**✓ 138.16 of the statutes is created to read:

8 **138.16 Title loans.**✓ **(1) DEFINITIONS.** In this section:

9 (a) “Division”✓ means the division of banking attached to the department of
10 financial institutions.✓

11 (b) “Licensed lender”✓ means a person licensed under s. 138.09.✓

12 (c) “Title loan”✓ means a loan of \$25,000 or less to a borrower, who obtains or
13 seeks to obtain the loan for personal, family, or household purposes, that is, or is to
14 be, secured by an interest, other than a purchase money security interest, in the
15 borrower’s motor vehicle, and that has an original term of not more than 6 months.✓

16 **(2) LOAN PRINCIPAL AND INTEREST.** (a) No licensed lender✓ may make a title loan✓
17 to a borrower that results in the borrower having liability for the loan, in principal,
18 of more than 50 percent of the value of the motor vehicle used as security for the loan.✓
19 The division✓ shall promulgate rules for determining the value of a motor vehicle for
20 purposes of this paragraph,✓ including rules specifying pricing guides that may be
21 used for determining value.✓

22 (b) 1. This section imposes no limit on the interest that a licensed lender may
23 charge before the maturity date of a title loan.✓

1 2. If a title loan is not paid in full on or before the maturity date, a licensed
2 lender may charge, after the maturity date, interest at a rate not exceeding 2.75
3 percent per month. Interest earned under this subdivision shall be calculated at the
4 rate of one-thirtieth of the monthly rate charged for each calendar day that the
5 balance of the loan is outstanding. Interest may not be assessed on any interest
6 earned under this subdivision.

7 **(3) RESCISSION.** A borrower may rescind a title loan, before the close of business
8 on the next day of business after the loan is made, or, if the place of business where
9 the loan is made is open 24 hours, before 5 p.m. on the next day of business after the
10 loan is made, by returning to the licensed lender the proceeds of the loan. The
11 licensed lender may not charge the borrower any fee for rescinding the title loan as
12 provided in this subsection.

13 **(4) OTHER REQUIREMENTS.** (a) A licensed lender may not make a title loan to a
14 borrower that is secured by an interest in a motor vehicle if the motor vehicle is
15 subject to another security interest under another title loan made by the licensed
16 lender or another licensed lender and the borrower is liable for repayment on the
17 other title loan.

18 (b) A licensed lender may not require a borrower to provide the licensed lender
19 with a key or copy of a key to a motor vehicle used as security for a title loan as a
20 condition for making the title loan to the borrower.

21 (c) A licensed lender or person acting on behalf of a licensed lender may not take
22 possession of a motor vehicle used as security for a title loan to a borrower without
23 serving notice on the borrower at least 15 days prior to taking possession. The notice
24 shall state the intent to take possession and describe the basis for the right to take

1 possession. This paragraph does not apply to possession that is obtained by a
2 borrower's voluntary surrender of a motor vehicle.

3 (d) A licensed lender or other person may charge a borrower a reasonable
4 storage fee for a motor vehicle of the borrower of which the licensed lender or person
5 acting on behalf of the licensed lender has obtained possession, including possession
6 that is obtained by voluntary surrender.

7 (e) A licensed lender shall return to a borrower the amount of any proceeds from
8 the disposition of a motor vehicle used as security for a title loan to the borrower that
9 exceed the borrower's liability to the licensed lender for the loan.

10 (f) A borrower is not liable to a licensed lender for any deficiency resulting from
11 the licensed lender's disposition of a motor vehicle used as security for a title loan,
12 unless the borrower has done any of the following:

13 1. Impaired the licensed lender's security interest by intentionally damaging
14 or destroying the motor vehicle.

15 2. Intentionally concealed the motor vehicle.

16 3. Pledged to the licensed lender a motor vehicle that is already encumbered
17 by an undisclosed prior lien.

18 4. Subsequent to obtaining the title loan, pledged or sold to a third party a
19 motor vehicle used as security for a title loan without the licensed lender's written
20 consent." (11)

21 **12.** Page 9, line 12: delete lines 12 and 13.

22 **13.** Page 9, line 12: after that line insert:

23 "63m. Page 32, line 7: after that line insert:

1 “(2m)✓ The treatment of section 138.14✓ of the statutes first applies to payday
2 loans, as defined in section 138.14 (1) (k)✓ of the statutes, as created by this act, made
3 on the effective date of this subsection.✓

4 (3m) The treatment of section 138.16✓ of the statutes first applies to title loans,
5 as defined in section 138.16 (1) (c)✓ of the statutes, as created by this act, made on the
6 effective date of this subsection.”.✓

7 **14.** Page 9, line 14: delete lines 14 and 15.✓

8 (END)